

**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**  
**April 12, 2001**

In Reply Refer To:  
1800B3-GDG

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In re: WREL-FM, Buena Vista, VA  
Facility No. 19672  
File No. BPH-19891109ID  
as modified by BMPH-19981116IF

WJMA-FM, Orange, VA  
Facility No. 54872  
File No. BMLH-19891213KE

Dear Counsel:

This letter concerns the March 26, 2001 Progress Report filed pursuant to the staff's February 28, 2001 letter extending the period for tolling Equus Communications, Inc.'s referenced permit ("Equus") to upgrade WREL-FM's licensed facilities from Channel 244A to Channel 244B1.

Background. On October 10, 2000, the staff approved Equus's request for tolling, noting that the referenced permit is conditioned so that WREL-FM may not commence program test authority operations on Channel 244B1 or receive grant of its license application until Piedmont Communications, Inc. ("Piedmont") commences program test authority operations and receives its license grant for WJMA-FM, Orange, Virginia, on Channel 255A. The staff emphasized that Equus and Piedmont were close to concluding an eleven-year process originating in a 1989 allocations proceeding, and that it is "unwilling to permit continued delays in instituting new service to the public which would be realized by the commencement of operation by WREL-FM on channel 244B1."

The Commission's records were therefore modified to reflect that the referenced permit expired February 10, 2001.

On February 12, 2001, Equus reported that substantial progress towards resolving this matter but requested a brief extension of the period to coordinate further with Piedmont regarding construction of the approved facilities. The staff agreed, modifying WREL-FM's permit to require completion of construction by March 25, 2001 or, in the alternative, to require a report on any continuing difficulties. Equus's March 26, 2001 report indicates that there are scheduling difficulties with the tower crew shared with Piedmont, and that Equus now expects to resolve this remaining matter by May 25, 2001.

Discussion. The Commission provides for the tolling in circumstances "there is the failure of a Commission-imposed condition precedent to commencement of operation." *Memorandum Opinion and Order* in MM Docket 98-43, 14 FCC Rcd 17525, 17540 (1999). In such cases, we "will not consider the permit of the initiating party forfeit provided that the permittee notifies the staff that construction is complete and the station is ready for operation prior to the expiration of the permit." *Id.*

While the condition in association with other factors prevented the commencement of authorized operations in past years, the stations should within the period now requested be able to resolve the remaining impediment to implementing their respective changes with Equus having constructed by the May 25, 2001 date specified in its current request. We will therefore modify the Commission's database to specify May 25, 2001 as the date for completion of Equus's authorized construction and, as ordered in our October 10, 2000 letter, for the simultaneous notification to Piedmont that WREL-FM is ready to commence program test operations.

This notification, in turn, requires that Piedmont simultaneously suspend operations on Channel 244A and implement its approved change to Channel 255A. If Piedmont is unable to commence operations on Channel 255A at this juncture, it must remain silent until it is ready to resume on its new channel. We remind Piedmont that, pursuant to 47 C.F.R. §73.1740(c), the licensee of any station failing to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period. *See also* 47 U.S.C. §312(g).

Accordingly, the Commission's database IS MODIFIED to specify May 25, 2001 as the date by which Equus must complete the authorized construction and file the appropriate license application to cover the referenced permit. Further, Equus IS ORDERED TO SIMULTANEOUSLY NOTIFY Piedmont Communications, Inc. that it is ready to commence operations pursuant to the Commission's program tests rules, 47 C.F.R. §73.1620. Finally, Piedmont IS ORDERED TO NOTIFY the staff, upon receipt of Equus's program test statement that it in turn is implementing operations on Channel 255A pursuant to its licensed parameters or, in the alternative, that it has suspended

operations pending resumption of operations on Channel 255A.<sup>1</sup> We do not contemplate revisiting this matter.

Sincerely,

Linda Blair, Chief  
Audio Services Division  
Mass Media Bureau

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<sup>1</sup>We remind Piedmont that it may conduct program tests in accordance with the provisions of 47 C.F.R. §73.1620 provided its transmission facilities comply in all respects with the referenced license, except for the channel specified above, and that it must file a license application (FCC Form 302) within 10 days of commencing program tests on Channel 255A.